

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 17 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTELMO ONTIVEROS,

Defendant - Appellant.

No. 06-10745

D.C. No. CR-02-00418-GEB

MEMORANDUM *

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Chief District Judge, Presiding

Submitted March 10, 2008 **

Before: T.G. NELSON, TASHIMA and BYBEE, Circuit Judges.

This is an appeal of the district court's order issued on November 21, 2006,
reaffirming the sentence, following affirmation in appeal No. 04-10298 of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

06-10745

appellant's conviction, but remand of the matter by this court of for further proceedings in light of *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005).

On remand, the district court reaffirmed the sentence previously imposed, finding that the sentence imposed was not materially different from the sentence that would have been given had the Court known that the guidelines were advisory.

A review of the record and the opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). The district court carefully considered the factors under 18 U.S.C. § 3553(a). Further "reasonableness" review by this court is not warranted. *See United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006). Appellant's argument that he should have been allowed to allocute when the case was remanded for an *Ameline* inquiry is foreclosed by this court's opinion in *United States v. Silva*, 472 F.3d 683 (9th Cir. 2007).

Accordingly, appellee's motion for summary affirmance is granted.

All pending motions are denied as moot.

AFFIRMED.